

Notice of Allowability

Application No.

10/524,492

Examiner

Anand Bhatnagar

Applicant(s)

HAMER ET AL.

Art Unit

2623

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 03/27/06.
2. ☒ The allowed claim(s) is/are 57-87 (now renumbered as 1-31).
3. ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some* c) ☐ None of the:
- ☒ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.
THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
- (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
- 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
- (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statements (PTO-1449 or PTO/SB/08), Paper No./Mail Date _____
- ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Interview Summary (PTO-413), Paper No./Mail Date _____
- ☐ Examiner's Amendment/Comment
- ☒ Examiner's Statement of Reasons for Allowance
- ☐ Other _____

JINGQI WU
PRIMARY EXAMINER

1. Applicant's amendment filed on 03/27/06 has been entered and made of record.
2. Applicant has abandoned a co-pending application (10/274,358) which as a result overcomes the provisional type double patenting given in the non-final office action filed on 12/27/05, therefore, the provisional type double patenting is now withdrawn, as well as, the 102(e) rejection which was based on the now abandoned application.
3. Applicant has also cleared up the inventorship issue, therefore, examiner withdraws the objection to this issue.

Allowable Subject Matter

4. Claims 57-87 are allowed.
5. The following is a statement of reasons for the indication of allowable subject matter: The closest prior art of McLaren et al. (U.S. patent pub. 2004/0066960 A1) discloses to analyze biological samples for proteins that are associated with cell disorders. McLaren et al. further discloses to determine the analysis of estrogen and progesterone receptors based on color. McLaren et al. does not teach the feature of (regarding claims 57, 80, and 85) "determining ER or PR status from at least one of a proportion of pixels corresponding to preferentially stained cells and a normalized average saturation," that, in combination with their other respective claim limitations. McLaren also does not teach the feature of (regarding claims 67, 81, and 86) "comparing the brightness-

related measures with predetermined equivalents obtained from comparison images associated with different values of C-erb-2," that, in combination with their other respective claim limitations.

The closest prior art of Brown (U.S. patent U.S. patent 5,410,250) discloses to determine the vascularity based on the proportion of the red, blue, and green components in an image. Brown does not teach the feature of (regarding claims 78, 82, and 87) "determining vascularity from the total area of the groups of contiguous pixels which are sufficiently large to correspond to vascularity, such area being expressed as a proportion of the image data's total area," that, in combination with their other respective claim limitations.

6. Any comments considered necessary by the applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance".

Contact Information

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anand Bhatnagar whose telephone number is (571) 272-7416, whose supervisor is Jingge Wu whose number is (571) 272-7429, group fax is 571-273-8300, and Tech center 2600 customer service office number is 703-306-0377.

AB

Anand Bhatnagar

Technology Division 2624

April 2, 2006

JINGGE WU
PRIMARY EXAMINER